HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.8 of 1992
Date of decision : 11.10.2006.

Union of India and otheres **.....Petitioners**
versus
Jagat Singh **.....Respondent**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : None.

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ORDER

HEMANT GUPTA, J. (Oral)

The challenge in the present revision petition is to the order of ejectment passed by the learned Courts below on the ground of non payment of arrears of rent on the first date of hearing.

The respondent has sought ejectment of the petitioner on the ground that tenant is in arrears of rent alongwith house tax w.e.f. March, 1987 till the filing of the petition i.e. 25.1.1989. It is the stand of the petitioners in the written statement that the landlord stopped accepting the rent since April, 1987 with a view to prepare false ground of eviction and that rent was sent from April, 1987 to January, 1989 through money orders, but the same has not been received by the landlord and, therefore, the landlord cannot seek eviction of the tenant on the ground of non payment of arrears of rent.

Learned Appellate Authority has found that on the first date of hearing on 23.3.1989 tenant put in appearance through one of his official, but arrears of rent was not paid within 15 days. Though an application was filed on behalf of the tenant on 1.6.1990 requesting the learned Rent Controller for assessing the arrears of rent, costs and interest thereon, but

the same was dismissed on 7.6.1990 on the ground that such arrears of rent could be tendered only on the first date of hearing and consequently, it was found that since the arrears of rent, costs and interest thereon, was not paid on 1.6.1990, therefore, tenant is liable to be evicted.

In view of the judgment of Hon'ble Supreme Court of India, **Rakesh Washawan versus Jagdamba Industrial Corporation, AIR-2002 S.C.-2004,** the tenant is entitled to another opportunity to make the payment of arrears of rent. It has been held in the aforesaid judgment that it is the duty of the Rent Controller to assess the arrears of rent, interest and cost and if provisionally assessed rent, costs and interest are not paid by the tenant, only then the tenant is liable to be evicted after final adjudication. Since in the present case there is no provisional assessment of rent, costs and interest, the order of eviction passed by the Courts below is not sustainable.

Consequently, the present revision petition is accepted. The order of ejectment passed by the Courts below is set-aside and the matter is remanded back to the learned Rent Controller to determine the arrears of rent, costs and interest thereon and provide an opportunity to the petitioners to tender such arrears of rent, costs and interest. If on the said date, tender is made in terms of the assessment, then the petition shall stand dismissed. In case of the failure to tender the rent etc., the ejectment shall follow.

The revision petition stands disposed of accordingly.

(HEMANT GUPTA)
JUDGE

October 11, 2006.
**mohinder*